

How to
avoid getting lost in
litigation

**Headquarters,
AMC-Level
Protest
Program**

A viable alternative to litigation

What if you...

...could reduce the time it takes to resolve bid protests by 80 percent? And what if you could do it with far less expense and still get the same impartial assessment and possible fixes?

You can. By using the HQ, AMC-level Protest Program.

What is it?

The HQ, AMC-level Protest Program is an alternative dispute resolution procedure. We designed it in response to contractor requests for a faster, less expensive way to resolve bid protests. The program encourages parties to seek resolution of concerns within AMC, rather than at the General Accounting Office, General Services Board of Contract Appeals or in court. It's patterned on the same dispute resolution procedures used at the General Accounting Office and offers protesters the same possible remedies for their complaints.

Use the program any time you and the contracting officer can't reach agreement on an important point, and you want a review in a disinterested forum — but you're hesitant to go to GAO, GSBCA, or Federal courts.

What's in it for me?

Enormous savings in time and money. Under the HQ, AMC-level Protest Program, protesters get a written decision in an average of 16 working days, compared to about 76 working days for a GAO decision. The program offers you the same full range of relief as a formal protest, but with far, far less paperwork and costly legal fees.



Even if our decision denies a protest or dismisses it on procedural grounds, we'll try to help you better understand our system of acquisition. We'll educate your company about our small business programs, or direct you to other sources of information and assistance within our acquisition system.

In short, the HQ, AMC-level Protest Program is a quicker, easier, less expensive alternative to litigation.

What's *not* in it for me?

That's simple:

- No trips to Washington, D.C. for conferences, hearings or trials
- No sworn statements
- No depositions or interrogatories
- No document discovery
- No major expenses
- No comments on comments on comments on comments
- No hassles
- No delays

...no maze of litigation

Why should I expect a fair consideration? Won't AMC just support its subordinate organizations?

The answer lies in the philosophy of the program's purpose. We're providing contractors a meaningful alternative forum — a valuable opportunity to speak to us about procurement concerns, and to have those concerns examined by an objective corps of investigators outside the buying activity. Our goal is not to “slam dunk” contractors. It's to consider the merits of their cases and, if the

contractors are right, to do something about it. In fact, we've called for corrective action in about 15% of the cases we've reviewed.

But does the program really work

Industry says it does. And so do the GAO and other Federal agencies. In the last four years, companies brought more than 300 protests to the program. Contractors appealed less than 40 AMC decisions to the GAO or GSBCA, which overturned only two of those decisions. The statistics clearly show the decision you'll get by using the HQ, AMC-level Protest Program is almost certainly the same decision you'd get after a costly, lengthy protest filed with the GAO.

In 1995, the White House's Office of Federal Procurement Policy selected the HQ, AMC-level Protest Program as one of the ten best practices in Federal Government. The HQ, AMC program embodies the spirit of the President's Oct. 25, 1995, Executive Order on agency protests, which orders agencies to allow protestors to request a review at a level about the contracting officer in a fair, fast, inexpensive and effective manner.

What makes it so successful?

- *The program is procedurally sound* — Set up to take into consideration the minimum amount of due process necessary to ensure an adequate telling of what happened.
- *Our adjudicators are experts.* The AMC headquarters team of counsel that will consider your case has handled thousands of protests. Five of our attorneys have

worked full time on protest matters for years. They *know* GAO case law. In fact, they've established one of the best GAO protest records among Federal agencies, so they have an unmatched ability to predict how the GAO would decide on any protest. When you take advantage of the HQ, AMC-level Protest Program, you can be assured of a sound, professional decision, based on GAO case law.

What corrective actions can you direct?

The AMC Command Counsel is designated as the HQ, AMC Protest Decision Authority and may grant any of these remedies:

- Terminate the contract
 - Re-compete the requirement
 - Issue a new solicitation
 - Refrain from exercising options under the contract
 - Award a contract consistent with statute and regulation
 - A combination of the above
- ...or other remedies appropriate to the individual case

Is there a “stop work”?

Yes. In order to show our willingness to consider a company's objections, we will stay the procurement — stop contract performance or withhold contract award while we consider the protest. Any protest which would cause award to be withheld, or a “stop work,” if filed at GAO or GSBICA, will have the same result if filed at HQ, AMC.

AMC has authority to override “stop works” triggered by GAO-level protests, and we use this authority on occasion. But AMC has granted no “stop work” overrides for HQ, AMC-level protests to date. The reason is simple: it takes less time to render an AMC-level protest decision than it takes to prepare and rule on an override request.

Realistically, what are my chances of “winning” an AMC-level Protest?

Better than they are at GAO. Contractors win only about two percent of protests filed with GAO against AMC field units. Companies do better than that when filing HQ, AMC-level protests...and at a fraction of the cost. As we’ve said, we call for some form of corrective action in about 15% of the cases we consider.

How do I resolve my concerns?

How to file?

You may contact the contracting officer designated in the solicitation to have your concerns resolved or, to take advantage of the HQ, AMC-Level Program, you may send a letter to:

HQ, Army Materiel Command
Office of Command Counsel
ATTN: AMCCC-PL
5001 Eisenhower Avenue
Alexandria, VA 22333-0001

You can also file by Fax: (703) 617-4999

File promptly, following the simple directions contained in every AMC solicitation.

Here's what your protest must include:

- The protester's name, address and telephone number, including fax number
- Solicitation or contract number
- The contracting activity and the contracting officer's name
- A detailed statement of all legal and factual grounds for protest. Explain what error the contracting officer made and how that hurts your chance to receive award. (Merely disagreeing with the contracting officer's decisions does not constitute grounds for protest.) Please include copies of all relevant documents.
- A request for a ruling
- A request for relief
- All protests must be signed by an authorized representative of the protester

HQ AMC Procedures

When your protest is received at HQ, AMC, we will request an administrative report from the contracting officer, in which he'll have to explain how he ran the buy. The contracting officer has 10 working days to submit this response. Within 10 working days of its receipt, HQ, AMC will issue a protest decision, similar in format and substance to GAO protest decisions. And that's it. *Total elapsed time: 20 working days or less.*

Corrective action, when directed, is implemented immediately. There have been no reconsideration requests submitted by AMC subordinate activities.

In certain cases, the HQ, AMC Protest Decision Authority may grant extensions of time for issuing the written decision. When an extension is granted, we will notify the protester within one working day.

If you file a protest with HQ, AMC prior to contract award, a contract may not be awarded unless authorized by the Deputy Chief of Staff for Acquisition, HQ, AMC, in accordance with FAR 33.103(a)(2).

If you file a protest within 10 calendar days after a contract is awarded, or within 5 calendar days after a required debriefing, the contracting officer will suspend performance.

Please remember, if you file a protest with us, you agree not to file with the GAO, GSBICA or other external forum while that protest is pending.

How much does it cost?

You control the amount of time and effort you want to put into your protest letter. The better you identify the contracting officer's error and why that adversely impacted you, the more likely you will prevail in the protest decision. After your letter is filed, you should not face any additional costs.

Should I file an AMC-level Protest to find out why I lost an award competition?

No. If you are dissatisfied with the result of a competition, and want to file a protest to discover why you lost, you are probably

wasting your time filing a protest at HQ, AMC. Instead, you should invoke your right to a debriefing under AMC's new debriefing program. You will be given more information than previously available at debriefings, and that should answer your questions. If you are still not satisfied, then consider filing an HQ, AMC-level protest.

What if I file an untimely protest to AMC?

Your protest will likely be dismissed as untimely, just as in any other protest forum. *However*, unlike any other protest forum, HQ, AMC will address the merits of your untimely protest in our decision. On occasion, we even take corrective action on untimely protests when, in our judgment, it is appropriate. (Belated corrective action virtually never occurs when other forums dismiss a protest as untimely.)

The bottom line...

The HQ, AMC-level Protest Program has a proven track record. It's...

Fair
Fast
Inexpensive
Effective

...and statistics show you'll almost certainly come away with the same impartial decision you'd receive had you gone to the time and expense of a GAO or GSBCA protest.



The HQ, AMC-level Protest Program — a practical alternative to the maze of litigation. A proven, efficient, and cost-effective way to resolve problems, save money, and get fair decisions. Fast.

For more information, contact:

HQ, U.S. Army Materiel Command
Office of Command Counsel
Chief, Protest Litigation Group
5001 Eisenhower Ave.
Alexandria, VA 22333-0001
Tel: 703-617-8176